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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

ANGELA RUGGIERIO,

Plaintiff,

v.

YAMAHA MOTOR CORPORATION, U.S.A.
JOHN DOE(s) A-Z as manufacturer(s), designer(s)
and/or distributor(s) (fictitious name(s), i/j/s/a

Defendants.

Civil Action No.: 1:15-cv-00049-JBS-KMW

**DECLARATION OF
ROBERT A. ASSUNCAO
IN SUPPORT OF MOTION TO
EXCLUDE THE EXPERT TESTIMONY
OF WILLIAM F. KITZES AND FOR
SUMMARY JUDGMENT**

I, ROBERT A. ASSUNCAO, being of full age, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am an attorney licensed in the State of New Jersey and admitted to practice in the United States District Court for the District of New Jersey, and I am a partner with the law firm Ansa Assuncao, LLP, counsel for Yamaha Motor Corporation, U.S.A. As such, I am fully familiar with the facts contained herein.

2. Attached hereto as **Exhibit 1** is a true and accurate copy of certain excerpts of the August 27, 2015 deposition of Angela Ruggiero.

3. Attached hereto as **Exhibit 2** is a true and accurate copy of certain excerpts of the August 28, 2015 deposition of Thomas Fimple.

4. Attached hereto as **Exhibit 3** is a true and accurate copy of certain excerpts of the August 28, 2015 deposition of Salvatore Chiaradonna.

5. Attached hereto as **Exhibit 4** is a true and accurate copy of the curriculum vitae of YMUS expert Robert K. Taylor, P.E.

6. Attached hereto as **Exhibit 5** is a true and accurate copy of the May 18, 2016 report of YMUS expert Robert K. Taylor, P.E.

7. Attached hereto as **Exhibit 6** is a true and accurate copy of certain excerpts of the June 15, 2016 deposition of YMUS expert Robert K. Taylor, P.E.

8. Attached hereto as **Exhibit 7** is a true and accurate copy of the curriculum vitae of YMUS expert Kevin C. Breen.

9. Attached hereto as **Exhibit 8** is a true and accurate copy of the May 20, 2016 report of YMUS expert Kevin C. Breen.

10. Attached hereto as **Exhibit 9** is a true and accurate copy of the curriculum vitae of YMUS expert Nathan T. Dorris, Ph.D.

11. Attached hereto as **Exhibit 10** is a true and accurate copy of the May 20, 2016 report of YMUS expert Nathan T. Dorris, Ph.D.

12. Attached hereto as **Exhibit 11** is a true and accurate copy of Set-Up and Predelivery Checklist signed by Thomas Fimple.

13. Attached hereto as **Exhibit 12** is a true and accurate copy of the photograph of the aft deck of the exemplar 2009 Yamaha WaveRunner and the aft deck of Mr. Fimple's 2009 Yamaha WaveRunner.

14. Attached hereto as **Exhibit 13** is a true and accurate copy of the Uniform Label on Mr. Fimple's 2009 Yamaha FZR WaveRunner.

15. Attached hereto as **Exhibit 14** is a true and accurate copy of the sheer, two-piece bathing suit worn by Plaintiff at the time of the accident.

16. Attached hereto as **Exhibit 15** is a true and accurate copy of certain excerpts of the Yamaha FZR WaveRunner Owner's/Operator's Manual.

17. Attached hereto as **Exhibit 16** is a true and accurate copy of the curriculum vitae of Plaintiff's expert William F. Kitzes, J.D.

18. Attached hereto as **Exhibit 17** is a true and accurate copy of the December 21, 2015 letter from Gary D. Ginsberg to Robert A. Assuncao.

19. Attached hereto as **Exhibit 18** is a true and accurate copy of the December 7, 2015 report of Plaintiff's expert William F. Kitzes, J.D.

20. Attached hereto as **Exhibit 19** is a true and accurate copy of certain excerpts of the February 4, 2015 deposition of William F. Kitzes, J.D.

21. Attached hereto as **Exhibit 20** is a true and accurate copy of the July 7, 2016 letter from Gary D. Ginsberg to Robert A. Assuncao.

22. Attached hereto as **Exhibit 21** is a true and accurate copy of the July 8, 2016 letter from Robert A. Assuncao to Gary D. Ginsberg.

23. Attached hereto as **Exhibit 22** is a true and accurate copy of the July 6, 2016 supplemental report of Plaintiff's expert William F. Kitzes, J.D., redacted by agreement of the parties.

24. Attached hereto as **Exhibit 23** is a true and accurate list of civil actions, from various jurisdictions within the United States, wherein the proposed expert testimony of William F. Kitzes, J.D. has been excluded by the respective court.

25. Attached hereto as **Exhibit 24** is a true and accurate copy of the decision excluding the expert testimony of William F. Kitzes, J.D., in *Landis v. Hearthmark, LLC*, No. 2:11-cv-101, 2014 WL 199261 (N.D.W.Va. Jan. 16, 2014).

26. Attached hereto as **Exhibit 25** is a true and accurate copy of the decision excluding the expert testimony of William F. Kitzes, J.D., in *Masterson v. B.J. Stores, Inc.*, No. 1:03-cv-03202-RMB-AMD, 2007 WL 6560686 (D.N.J. March 20, 2007) (Doc. 93).

27. Attached hereto as **Exhibit 26** is a true and accurate copy of the decision excluding the expert testimony of William F. Kitzes, J.D., in *Garza v. Sears Roebuck and Co.*, No. V-96-099 (S.D. Tex. Sept. 21, 1998).

28. Attached hereto as **Exhibit 27** is a true and accurate copy of the decision excluding the expert testimony of William F. Kitzes, J.D., in *Williams v. Southcorp USA Water Heaters, Inc.*, No. 3:95-cv-436, (E.D. Va. Jan. 16, 1996).

29. Attached hereto as **Exhibit 28** is a true and accurate copy of certain excerpts of Defendant Yamaha Motor Corporation, U.S.A.'s First Set of Interrogatories to Plaintiff and a true and accurate copy of certain excerpts of Plaintiff's Answers to Defendant's First Set of Interrogatories.

30. Attached hereto as **Exhibit 29** is a true and accurate copy of the New Jersey State Police Boating Accident Investigation Report.

I hereby declare that the foregoing statements made by me are true and accurate to the best of my knowledge. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

Dated: August 26, 2016

/s/ Robert A. Assuncao

Robert A. Assuncao